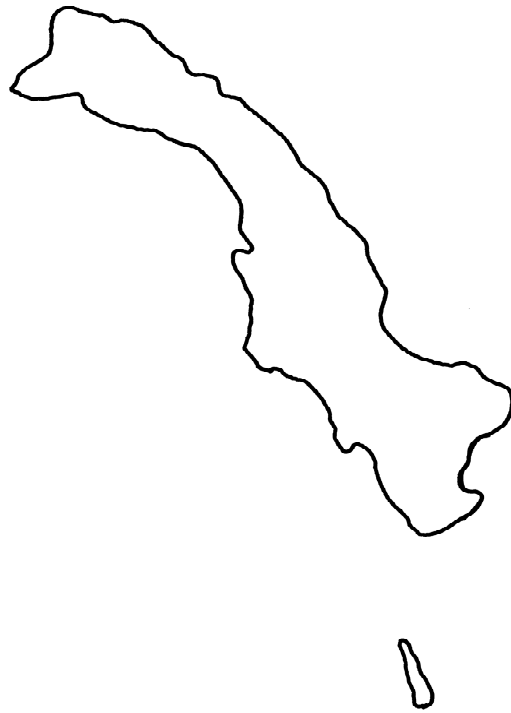


WHITEFISH & LOST COON

LAKE AND LAKESHORE PROTECTION REGULATIONS



**ADDRESSING WHITEFISH AND LOST COON
LAKES WITHIN THE CITY OF WHITEFISH &
FLATHEAD COUNTY, MT.**

Updated August 5, 2004

WHITEFISH AREA LAKE AND LAKESHORE PROTECTION REGULATIONS

ADOPTED BY:

CITY OF WHITEFISH

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May 18, 1998 - Ordinance #98-4

March 1, 1999 - Ordinance #99-2

June 4, 2001 - Ordinance #01-10

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TABLE OF CONTENTS

CHAPTER	PAGE
1 General Provisions.....	1
1.1 Title.....	1
1.2 Authority.....	1
1.3 Purpose.....	1
1.4 Jurisdiction.....	1
1.5 Severability	2
1.6 Interpretation.....	2
2 Permits.....	3
2.1 Permit Required	3
2.2 Exemptions	4
2.3 Construction or Installations Prohibited	5
2.4 Restoration.....	6
2.5 Property Rights	6
2.6 Permission to Enter.....	6
2.7 Easement Holder Rights.....	6
3 Application Review Procedure.....	7
3.1 Application	7
3.2 Application Procedure	7
3.3 Review Period	8
3.4 Permit Validity	8
4 Permit Issuance and Evaluation Criteria.....	9
4.1 Policy Criteria for Issuance of a Permit	9
4.2 Policy Considerations for Work in the Lakeshore Protection Zone.....	9
A. General Construction Materials	9
B. Excavation or Filling of Materials.....	10
C. Erosion, Sedimentation and Storm Runoff.....	10
D. Constructed Area.....	10
E. Removal of Debris.....	10
F. Burning	11
G. Setback Requirements	11
H. Use of Mechanical Equipment	11
I. Docks.....	11
J. Marinas	12
K. Boathouses, Boat Shelters and Shore Stations.....	12

L.	Boat Ramps and Boat Rail Systems	13
M.	Retaining Walls	13
N.	Dredge, Fill and Swim Beach Creation	13
O.	Utility Lines	14
P.	Fuel Tanks	14
Q.	Buoys.....	14
R.	Dwelling Units.....	15
S.	Fences and Hedges	15
T.	Decks, Walkways and Stairways.....	15
5	Construction Standards.....	17
5.1	General Construction Standards.....	17
A.	Materials	17
B.	Excavation or Filling of Materials.....	19
C.	Erosion, Sedimentation and Vegetation	19
D.	Constructed Area.....	20
E.	Removal of Debris.....	20
F.	Burning	20
G.	Setback Requirements	21
H.	Use of Mechanical Equipment	21
I.	Usage.....	22
5.2	Design and Construction Standards for Specific Facilities.....	23
A.	Docks.....	23
B.	Marinas	26
C.	Boathouses, Boat Shelters and Shore Stations.....	28
D.	Boat Ramps and Boat Rail Systems.....	30
E.	Retaining Walls.....	30
D.	Dredge, Fill and Swim Beach Creation.....	32
G.	Utility Lines	33
H.	Fuel Tanks	36
I.	Buoys.....	36
J.	Dwelling Units.....	37
K.	Fences and Hedges	38
L.	Decks, Walkways and Stairways.....	38
M.	Restoration of the Lakeshore Protction Zone.....	38
6	Administration.....	40
6.1	Whitefish City-County Lake and Lakeshore Protection Committee	40
A.	Creation, Composition and Compensation of Members	40
B.	Duties	41
C.	Organization.....	41

6.2	Variances.....	41
	A. General Criteria.....	41
	B. Review Procedure	42
6.3	Violations – Penalty	43
6.4	Non-Conforming Structures	44
6.5	Amendments	44
6.6	Liability	45
7	Definitions	46
	Index	52

CHAPTER 1 - GENERAL PROVISIONS

1.1 TITLE

These regulations shall be known and referred to as the "Whitefish Area Lake and Lakeshore Protection Regulations."

1.2 AUTHORITY

These regulations are adopted under the authority of the State of Montana, 75-7-207, M.C.A., which requires local governing bodies to adopt regulations regarding the issuance or denial of permits for work in lakes within their jurisdiction, including land which is within twenty (20) horizontal feet of the mean annual high water elevation (See Figure #1).

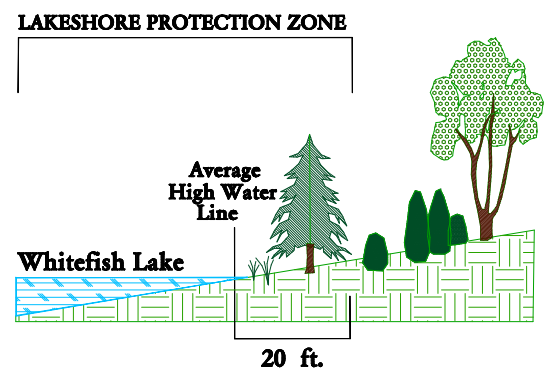


Figure 1. Lakeshore Protection Zone

1.3 PURPOSE

The purpose of these regulations is to:

- A. Protect the fragile, pristine character of Whitefish area lakes and the intertwined adjacent riparian and upland areas.
- B. Conserve and protect natural lakes because of their high scenic and resource value;
- C. Conserve and protect the value of lakeshore property;
- D. Conserve and protect the value of the lakes for the State's residents and visitors who use and enjoy them.

1.4 JURISDICTION

These regulations govern any work which alters Whitefish Lake and Lost Coon Lake, and the land which is within twenty (20) horizontal feet of the mean annual high water elevation of these lakes. The mean annual high-water elevation for Whitefish Lake has been established at *3000.6' msl ('88 Datum). The mean annual high-water elevation on Lost Coon Lake is 3104' msl.

*Footnote: same as 2997' msl ('29 Datum)

1.5 SEVERABILITY

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

1.6 INTERPRETATION

These regulations supplement all other regulations, and the permit issued hereunder does not supersede or negate the necessity for obtaining other permits as may be required by other governmental units having jurisdictional responsibilities over a lake or its lakeshore. Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by any other regulation, resolution, ordinance or statute, the provisions of these regulations shall govern.

CHAPTER 2 - PERMITS

2.1 PERMIT REQUIRED

No person shall proceed with any work on, or alteration or disturbance of a lake, lakebed, or lakeshore until he/she has obtained, and has physical possession of a valid "Lakeshore Construction Permit" from the governing body.

The person who performs or authorizes such work, and property owner, are responsible for assuring that a valid permit has been obtained from the governing body.

The permit issued shall be displayed, during work activity so that it is conveniently visible to the public.

Without limitation, the following activities, when conducted within the lake, lakebed or lakeshore protection zone, are examples of work for which a permit is required:

- A. Construction of channels or ditches;
- B. Excavation;
- C. Dredging: To remove muck, silt sediment, rock or vegetation;
- D. Filling, including artificial beach creation;
- E. Construction of lagoons;
- F. Construction of living quarters, building, or other impervious surfaces;
- G. Construction of boat service facilities, including the installation of fuel pumps or sewage pump out facilities;
- H. Construction of elevated structures, (ex. decks, overhangs), including extensions into the air space;
- I. Construction of retaining walls and breakwaters;
- J. Construction, installation or additions to docks;
- K. Installation of boat and personal watercraft shore stations, boat rail systems, boat ramps, boat storage and parking facilities, buoys and floating docks,

and floating trampolines;

- L. Installation of water lines, sewer lines or other utility lines or facilities;
- M. Any major clearing or removal of natural vegetation;
- N. Reconstruction of existing facilities;
- O. Stockpiling brush, trees, vegetation, construction materials or debris;
- P. Moving a dock, shore station, or buoy to another location on the lake;
- Q. Operation of machinery, with the exception of recreational watercraft and equipment used for seasonal removal/installation of dock.
- R. Any other work, not herein mentioned, that may have an impact on a lake, lakebed or lakeshore.

2.2 EXEMPTIONS FROM PERMIT REQUIREMENTS

The following types of work are not required to obtain a permit, but shall comply with the construction criteria of these regulations:

- A. Repair work or normal maintenance work, provided that:
 - The materials comply with the construction criteria of these regulations.
 - The repair work does not exceed fifty percent (50%) of the value and/or size of the structure.
 - The existing facility is not reconstructed or changed in size, shape, use or bulk.
 - The work does not include any dredging, filling or excavation.
- A. Buoys placed in a lake on a temporary basis (not exceeding ten (10) days) in a calendar year.
- C. Emergency work where a condition exists that poses an imminent threat to property, structures, or improvements provided that:
 - The work being done is only what is necessary to mitigate the immediate threat; and
 - The conditions which constitute the threat were caused by extenuating circumstances which could not be readily anticipated

and which do not re-occur on an annual basis.

The following procedures shall be followed where emergency work is performed:

- The person proposing to do emergency work shall notify the governing body as to the nature of the emergency, description of the work to be done and the location of the site. If the work date falls on a normal working day (Monday through Friday, excluding holidays), notification must be made prior to beginning work. If the work date falls on a non-working day (Saturday, Sunday and holidays), notification must be made on the next working day. Notification shall be made by phone and in writing.
- The Administrator shall review the notification. If the Administrator determines that the work is emergency work, the Administrator shall sign the notification and send a copy of it to the applicant and the Lakeshore Protection Committee.
- If work done under the emergency provision goes beyond the minimum necessary to mitigate the danger, or if work is done where no emergency condition existed, such work shall be considered a violation of these regulations.

D. Real estate signs less than 6 square feet in size.

2.3 CONSTRUCTION OR INSTALLATIONS PROHIBITED

The following types of work, new construction, and installations are prohibited in the Lakeshore Protection Zone:

- A. Boat Houses;
- B. Boat Shelters;
- C. Pump Houses;
- D. Crib Dock;
- E. Pilings;
- F. Covering Beach with Impervious Non-native Material (material which does not allow water absorption);
- G. Any Installation of Asphalt;

- H. Satellite Dishes;
- I. Permanent or Temporary Buildings;
- J. Hot Tubs;
- K. Fuel Storage Tanks;
- L. Decks;
- M. Roads, Driveways, or Parking Areas; and
- N. Signs.

2.4 RESTORATION

A person who performs work in the lake, lakebed or lakeshore without a permit for that work shall, if required by the governing body, restore the lake, lakebed, or lakeshore to its condition before he/she disturbed it.

2.5 PROPERTY RIGHTS

Work or development approved by permit under these regulations shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

2.6 PERMISSION TO ENTER

The person making application for a permit grants the governing body, Lakeshore Protection Committee, planning board, their staff and/or their consultants permission to enter upon his/her land or upon the waters of the lake to evaluate the site and verify compliance with any Lakeshore Construction Permit issued under these regulations both during the application process and upon completion of construction.

2.7 EASEMENT HOLDER RIGHTS

Easement holders (individuals or groups who have easement access or easement rights within the lakeshore protection zone) are not eligible to apply for or obtain a Lakeshore Construction Permit and shall not perform work within the Lakeshore Protection Zone.

CHAPTER 3 - APPLICATION REVIEW PROCEDURE

3.1 APPLICATION

Depending on the jurisdiction, any person seeking a Lakeshore Construction Permit shall submit a complete application to the Administrator of either the Flathead County Planning & Zoning Office or the Tri-City Planning and Zoning Office on an approved form provided by the Administrator. The application shall be accompanied by a vicinity map, photographs, a scaled site plan, detailed project drawings, and fee established by the governing body.

The applicant may be required to submit additional information where the Administrator, Lakeshore Protection Committee or governing body determine that additional information is necessary to adequately evaluate the proposal.

3.2 APPLICATION PROCEDURE

1. An applicant shall file an application with the Administrator.
2. An application is deemed as accepted when a complete application, required accompaniments and fee are presented to the Administrator. The application must be either signed by the property owner or a letter of authorization from the owner must be attached.
3. Upon acceptance of an application, the Administrator shall advise all Lakeshore Protection Committee members that the application is ready for review.
4. The Chairman shall be responsible to see that all pending applications are brought before the committee for comment and action.
5. The committee shall have 40 days from the date of acceptance of the completed application to review and forward comments to the governing body for final action. If no comment is received after 40 days, the application will be forwarded to the Administrator for final action by the governing body with no comment. If the application is incomplete, the Administrator or Lakeshore Protection Committee shall notify the applicant within (40) days of receipt of the application.

6. The Administrator may issue an administrative permit specifically for floating docks which do not exceed 30 feet in length, (excluding gangways of 2-feet or less in width) for shore stations, for buoys, for burning in the lakeshore protection zone, and for buried domestic water lines installed during low water when such activities are found by the Administrator to have a minimal or insignificant impact on the lake or lakeshore and to comply with the construction standards found in Chapter 5 of these regulations. The Administrator will notify the committee when these permits are issued.

3.3 REVIEW PERIOD

Review of a permit application and its approval, conditional approval or denial by the governing body, shall take place within ninety (90) days from the date of acceptance by the Administrator unless the application is deemed incomplete by the Lakeshore Protection Committee or the applicant agrees to an extension of the review period. An application that is not acted on by the governing body within the specified review period shall be deemed approved and work may proceed according to the plans submitted provided that the work conforms to the construction standards contained in Chapter 5 of these regulations.

3.4 PERMIT VALIDITY

A permit is valid for a period of twelve (12) months from the date of issuance unless otherwise approved by the governing body. All construction shall be completed prior to expiration of the permit. The permit may be renewed without submission of a new application or plans if the applicant requests a permit renewal in writing from the Administrator before the original permit expires and the Administrator grants a renewal. The Administrator, at their discretion, may grant more than one renewal.

CHAPTER 4-PERMIT ISSUANCE AND EVALUATION C R I T E R I A

4.1 POLICY CRITERIA FOR ISSUANCE OF A PERMIT

All Lakeshore Construction Permits shall be evaluated against the policy criteria for issuance of a permit. A permit shall only be issued when it is found that the proposed action will not, during either its construction or its utilization:

- A. Materially diminish water quality;
- B. Materially diminish habitat for fish or wildlife;
- C. Interfere with navigation or other lawful recreation;
- D. Create a public nuisance or public safety hazard;
- E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
- F. Alter the characteristics of the shoreline.

4.2 POLICY CONSIDERATIONS FOR WORK IN THE LAKESHORE PROTECTION ZONE

The following policy considerations have been established for the construction standards contained in Chapter 5 and shall be considered when evaluating any variance from the adopted construction standards. For standards specific to a particular structure or improvement refer to Chapter 5.

- A. GENERAL CONSTRUCTION MATERIALS
 - 1. Wood preservatives leach over time and degrade water quality.
 - 2. While metals are generally inert except for oxidation, surface applications of some foreign material (i.e. wet paint, grease, oil, etc.) can degrade water quality.
 - 3. Any building material should be stable and free of silts, sands, fines, chemical preservatives, grease, oil or any surface application which could immediately or eventually contaminate water quality.

B. EXCAVATION OR FILLING OF MATERIALS

1. The lakebed or lakeshore should be preserved in its natural condition to the greatest extent possible, in order to preserve its aesthetic value, protect fish and wildlife habitat and water quality.
2. Increased sedimentation in the lake should be minimized to the greatest extent possible, as a protection for fish habitat and water quality.

C. EROSION, SEDIMENTATION AND STORM RUNOFF

1. Any construction activity which will affect the lakeshore protection zone should incorporate all necessary means to prevent pollution of the lake, including erosion, sediment and storm runoff controls.
2. The proposed activity should not cause, directly or indirectly, increased sedimentation, an increase in suspended sediments, or an increased discharge of nutrients into the lake either during its construction or utilization.
3. Native plant species are an important biological and aesthetic component of the lakeshore. Natives may be more difficult to reestablish than cultivars, since natives generally do not grow well in pots, are smaller and not as widely available as cultivars and are adapted to specific sites and plant communities. Once established, however, natives tend to grow better and require less maintenance.

D. CONSTRUCTED AREA

1. Excessive constructed area and impervious cover should be discouraged as it may affect water quality, detract from the aesthetic values of the shoreline or alter natural shoreline characteristics.
2. Porous or permeable materials are preferred to impervious materials as they reduce the intensity and amount of runoff channeled to adjoining areas.

E. REMOVAL OF DEBRIS

Construction debris that remains in the lake or lakeshore protection zone may affect the quality of the water, cause safety problems or detract from the aesthetic value of the shoreline.

F. BURNING

Burning of materials on the lakebed or lakeshore will cause a degradation of water quality, and may create safety hazards or detract from the aesthetic characteristics of the shoreline.

G. SETBACK REQUIREMENTS

1. Structures should be adequately set back from the side property lines or riparian boundary lines in order to prevent overcrowding and to maintain the aesthetic values of the shoreline.
2. Common facilities, constructed and shared by two or more property owners, are encouraged, as they would reduce the number of facilities on the lake, thereby reducing potential impacts. Where such a situation exists, setback requirements from the common property or riparian boundary (see definition) lines may be waived, provided that the application clearly specifies that the facilities are to be used in common by such owners.
3. Stream and spring outlets on lakeshores are valuable aquatic and aesthetic resources. They provide spawning and rearing habitat for numerous fish species, as well as a variety of food organisms. Structures should be adequately set back from such outlets in order to protect fish habitat.

H. USE OF MECHANICAL EQUIPMENT

1. Limited use of vehicles and other mechanical equipment is necessary for some permitted lakeshore construction activities, such as installing water lines and exempt activities, such as seasonal removal or installation of existing docks.
2. Use of mechanical equipment has significant potential for damaging the natural armament of the lakeshore and lakebed, exposing sediments, damaging vegetation, and scarring of sloped terrain and the lakeshore.

I. DOCKS

1. Open and floating docks are encouraged as they allow complete water transfer beneath them. Such docks with large free water transfer areas do not impede current flows and, therefore, stagnant water conditions are not created.

2. Solid docks (i.e. rock filled crib dock), partially open docks, or structures which essentially block the transfer of water beneath the dock shall not be permitted.
3. Docks have a high potential to interfere with public navigation and public recreation. The property owner has a riparian right to lake access; the public has a right to navigation and recreation on public waters. A balance of these two rights should be arrived at by consideration of the water depth at a given location and the distance a structure extends into the public waters.
4. Common shoreline dock facilities shared by two or more owners, should be encouraged, as such facilities will reduce the overall environmental impacts on the lakebed and lakeshore and ease navigational congestion on the lake.

J. MARINAS

1. Marinas, because of their size, have a high potential to impact the lake and lakeshore. A marina should be designed to accommodate only its anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to insure general compatibility with the character of the area so as not to create an unwarranted disturbance or nuisance, and to protect the quality of the water and fish and wildlife habitat.
2. A distinction should be made between public and commercial marinas providing services to the general public and meeting the needs of many lake users and a private marina meeting the needs of a homeowners' association or other limited group.

K. BOATHOUSES, BOAT SHELTERS AND SHORE STATIONS

1. Boathouses and boat shelters have a high potential to: detract from the aesthetic values of the shoreline; block scenic views from neighboring properties; significantly alter the natural characteristics of the shoreline and diminish water quality.
2. Shore stations may detract from or block scenic views from neighboring properties.
3. Floating boatlifts generally cover a greater water surface area than other shore station types and may act as dock area when the boat is not in the lift. Therefore, floating boatlifts have the same potential impacts as docks and shore stations combined.

L. BOAT RAMPS AND BOAT RAIL SYSTEMS

1. Boat ramps have a potential to increase sedimentation in the lake, diminish water quality and alter natural shoreline characteristics.
2. Boat rail systems, if properly installed, generally have an insignificant impact on the lake and its lakeshore.
3. Facilities designed for removal of boats from a lake, such as rail systems, are preferred to attempting to build a dock, shore station, or boat shelter for protection of boats, as the overall impacts tend to be less adverse.

M. RETAINING WALLS

1. Retaining walls significantly alter shoreline characteristics. They create a totally unnatural shoreline which causes alteration of wave actions, beach dynamics and shoreline erosion patterns.
2. Retaining walls which do not follow the natural contour of the shoreline have a high probability of affecting erosion of neighboring properties and may have adverse impacts to the lake and lakebed.
3. Other alternatives, such as riprap, should be explored first. Retaining walls should be constructed only as a last resort. When used, retaining walls should be constructed only for the purpose of stopping shoreline erosion.
4. Stone retaining walls are preferred to concrete retaining walls. Only natural riprap should be used. Concrete may be used as a mortar only.

N. DREDGE, FILL AND SWIM BEACH CREATION

1. Dredging of a lakebed or lakeshore may have adverse effects due to suspension of fine materials, re-suspension of nutrients and toxic materials, exposure of stable lakebed sediments to unstable conditions, removal of lakebed armament and creation of steep bench areas.
2. Filling of a portion of a lake may have adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, creation of an unnatural shoreline, creation of steep bench areas and alteration of current flows and wave actions.

3. Filling of wetlands may have adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, loss of water storage capacity and loss of the natural storm runoff cleansing functions and the natural nutrient entrapment functions of wetlands.

O. UTILITY LINES (Electrical, Sewer, Water, Wells)

1. The placement and maintenance of utility lines and wells, if done improperly, can have significant effects on lakes due to disturbance of the lakebed or lakeshore.
2. Electrical lines are unsightly, potentially dangerous in or near a water environment and generally in conflict with the natural setting of the lakeshore protection zone.
3. Unrestricted lighting in the lakeshore protection zone can be distracting, hazardous to navigation and contributory to an unnatural setting.

P. FUEL TANKS

1. Fuel spills into the lake can create serious water quality hazards and may impair fish and wildlife habitat.
2. Fueling stations on or by a dock shall be located away from berthing areas in order to prevent any spread of a possible fire.

Q. BUOYS

1. Buoys may create a potential safety hazard to navigation and recreation, and so should only be allowed in selective locations.
2. Buoys should be securely anchored and well marked for safety reasons.
3. Buoys shall be made of low-impact plastic. Logs and/or metal barrels should not be allowed.
4. Unregulated buoy placement and the associated attachment of boats, rafts, etc. creates visual pollution, obstruction of open space, and, when done by non-lakeshore owners, an infringement on property owners usable space.

R. DWELLING UNITS

Dwelling units represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relatively short periods of time for recreational purposes. Dwelling units are potentially harmful through: intrusion of non-aquatic land use in an aquatic environment; creation of impervious surfaces; increasing surface storm runoff into the lake, concentrating human activities on the shoreline; obstruction of scenic views and possible sewer leakage.

S. FENCES AND HEDGES

1. Fences or hedges within the lake or lakeshore protection zone restrict the free movement of people and may detract from the aesthetic value of the lakeshore.
2. Fences or hedges are discouraged within the lakeshore protection zone and should only be allowed in necessary situations such as where residential property abuts a more intense use such as a park, resort, or commercial operation. In such cases, they should not restrict visibility of the neighboring properties or extend water ward beyond the high water elevation.

T. DECKS, WALKWAYS AND STAIRWAYS

1. Constructed stairways and walkways tend to concentrate human activity within the lakeshore protection zone and thus may help to protect fragile vegetation and shoreline from dispersed foot traffic.
2. These structures add impervious surface which increase storm water runoff and may create significant visual impact discordant with natural scenic values.
3. These structures should be properly placed and constructed to mitigate visual impact from adjoining properties and the lake. This is typically accomplished by flush or ground mounting of all stairways and walkways in conjunction with wise use of the topography and landscaping.
4. Pathways on existing grade with embedded steps of stone or untreated timbers are preferred on more level terrain to constructed walkways or elevated stairways.

5. Some very steep lakeshore properties, where stairway construction standards below cannot be met, may lack reasonable access to the lake and should be considered view lots.

CHAPTER 5- CONSTRUCTION STANDARDS

5.1 GENERAL CONSTRUCTION STANDARDS

Any proposed project or action shall be in compliance with the following requirements:

A. MATERIALS.

1. Wood.

- a) All wood used in the Lakeshore Protection Zone shall be untreated and left in its natural state. No preservatives including varnish, stain, paint, linseed oil, diesel fuel, creosote or any pressure treated preservatives are allowed. This prohibition shall not prohibit the application of paint or stain as a routine maintenance measure for any structure built prior to 1978 located landward of the high-water line which has been painted or stained on a routine basis in the past.
- b) Where wood is used for any project which would at sometime be in, or over the water, only solid wood shall be used. This specifically excludes plywood, particleboard, chipboard, etc.

2. Metal.

- a) Any metal used in the lakeshore protection zone may be painted or coated with an inert metal sealant (i.e. paint, plastic, rubber, enamel, etc.) which has thoroughly dried/cured prior to its use.
- b) Minimal lubrication of critical metal components to allow movement is allowed.
- c) No metal used in the lakeshore protection zone may contain deposits or a surface application of any of the following:
 - (1) Grease or oil (other than #2 above);
 - (2) Paint, varnish or coatings which have not thoroughly cured or dried; or

- (3) Any chemical or substance which will wash off or dissolve when in contact with water.

3. Styrofoam Flotation Logs.

- a) All dock floatation Styrofoam shall be extruded closed-cell polystyrene (blue or pink logs) unless encased in "rotomolded floats (a specific manufacturing process utilizing heavy-gauge plastic covering).
- b) All floatation logs shall be completely encased in solid wood (excluding particle board, plywood, etc.) or in metal, fiberglass or plastic. Drain holes or a maximum of one-half inch spacing between wood boards may be allowed.

4. Asphalt.

Asphalt or similar petroleum based products intended for use as a travel surface are prohibited.

5. Concrete.

- a) Concrete is the least desirable construction material. Wood and stone are preferred. Concrete should be utilized only where structural strength and location dictate no other alternative.
- b) In all cases, concrete shall be aesthetically shielded by the creative use of rock or wood.
- c) Wet concrete shall not be poured into or allowed to come in contact with the lake.

6. Rock or Stone.

- a) Rock or stone is a preferred natural material for construction.
- b) All rock or stone which will come in contact with the lake shall be free of silts, sands or fines.
- c) Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays or fines.

B. EXCAVATION OR FILLING OF MATERIALS

1. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner so as to prohibit re-entry of the material into the lake.
2. Any materials used for fill shall be free of fine materials (i.e., clays, silts and sands), unless the material is placed behind a retaining wall which will prevent introduction of the materials into the lake. Large cobbles and boulders lying on the lake bottom and not part of the lakebed armament may be hand picked, provided that such hand picking can be done without excavating any fine lakebed materials and that an armament of rock or gravel remains on the lakebed in the affected areas.
3. The interface of fill materials, such as rip rap, with the lake water shall be sloped at an average 1 horizontal: 2 vertical ratio in order to dissipate wave energy. The face of the slope shall be covered with suitable materials to discourage soil erosion and slumping of banks.

C. EROSION, AND VEGETATION

1. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.
2. Natural vegetation in the Lakeshore Protection Zone shall be preserved wherever possible.
3. Healthy trees three (3) inches or more in diameter as measured at eight (8) inches above ground shall be preserved. In cases where a tree presents a safety hazard to persons or property, the tree may be removed (by lakeshore permit) provided a similar tree species of three (3) inches in diameter, as measured at eight (8) inches above ground, is planted within five (5) feet of the old tree and maintained for a period of ten (10) years. If the tree dies within the ten (10) year maintenance period, it shall be replaced subject to this same under Section 5.1.C.3.
4. Denuding of trees is prohibited. A tree on which all limbs have been removed up to a height of twenty-five (25) feet, and over forty percent (40%) of trunk height, shall require the planting and maintenance of a future replacement tree in accordance with Section 5.1.C.3. The old tree cannot be removed until the new replacement

tree has reached a height of over twenty-five (25) feet.

5. A dead tree three (3) inches or more in diameter as measured eight (8) inches above the ground may be removed with approval from Flathead County Planning and Zoning or the Tri-City Planning Office. If there are no other trees over three (3) inches in diameter within eight (8) feet of the dead tree, then a new tree must be planted and maintained in accordance with Section 5.1.C.3.
6. Natural vegetation shall be provided, if required, as a means of stabilizing erosive areas. Topsoil may be allowed in quantities necessary for establishing and maintaining new plantings.
7. New plants introduced into the Lakeshore Protection Zone must be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. Flower gardens are prohibited. A resource file on native plants is available at Whitefish City Hall and the Flathead County Planning & Zoning Office, and the Tri-City Planning and Zoning Office.
8. Grass seeding or placement of sod in the Lakeshore Protection Zone is prohibited. Turf grass or non-native vegetation, once removed from or destroyed in the Lakeshore Protection Zone must be replaced with native vegetation as described in 5.1.C.7. A finely ground bark, compost, or "soil pep" is recommended for ground cover in conjunction with the native plants.
9. Application of pesticide (include insecticide) or herbicide is prohibited in the lakeshore protection zone. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

D. CONSTRUCTED AREA

The total of all constructed areas within the lake and lakeshore protection zone shall not exceed eight (8) square feet per each lineal foot of shoreline.

E. REMOVAL OF DEBRIS

All construction debris shall be immediately disposed of outside the lake and lakeshore protection zone in such a manner and in such a location so as to prohibit its re-entry into the lake.

F. BURNING

1. No burning will be allowed lake ward of the mean high water line.

2. Burning in the 20-foot setback zone does require a lakeshore construction permit and may only be allowed as a last resort where there is no physical way to access or remove the debris from the Lakeshore Protection Zone.
3. This section is not intended to prohibit small "campfires" above the average high water line.

G. SETBACK REQUIREMENTS

1. All structures shall meet the setback requirements for the type of structure proposed as established in Section 5.2.
2. Where no specific setback requirements for the specific type of structure proposed have been established, the structure(s) shall be set back from the side property lines and/or riparian boundary (see definition) lines based on the property's lakeshore frontage. The setbacks shall be as follows:

Lakeshore Frontage(ft.)	Minimum Setback (ft.)
60 of less	10.0
More than 60, but less than 75	12.5
75 of More	15.0

3. Structures shall be set back a minimum of twenty-five (25) feet from ordinary stream high water for streams and springs having a flow less than twenty-five (25) cubic feet per second (cfs). Streams and springs with higher flow volumes will be assessed on an individual basis. Swift Creek, the Whitefish River, Lazy Creek and Hellroaring Creek have flows above 25 cfs at some times during the year.

H. USE OF MECHANICAL EQUIPMENT

1. Use of hand tools is encouraged wherever possible as an alternative to use of mechanical equipment.
2. Use of mechanical equipment in the lakeshore protection zone is permitted only if the equipment does not come in contact with the lake; expose silts or fines; or gouge, rut, or otherwise damage the lakeshore or vegetation.
3. The lakeshore shall be immediately restored to its condition prior to construction. All equipment tracks shall be raked or otherwise removed by hand.
4. Temporary storage of vehicles, trailers, and other equipment or

construction materials in the lakeshore protection zone is prohibited.

I. USAGE

1. Usage of a dock is limited to the properties applied for in the permit application when the dock is non-conforming, or is granted under variance, or is an expanded shared dock granted under Section 5.2.A.12.b.

5.2 DESIGN AND CONSTRUCTION STANDARDS FOR SPECIFIC FACILITIES

In addition to meeting the general construction standards outline in Section 5.1, any proposed project shall meet the following design and construction standards:

A. DOCKS

1. Docks shall not exceed sixty (60) feet in length including ramp (gangway) if there is four (4) feet of water depth at the end of the dock when the lake is at its low water elevation. Temporary gangways with a width of two (2) feet or less that are used to access the dock during high water are exempt from the overall length standards.
2. Where the depth of the water, at the end of a sixty (60) foot dock is less than four (4) feet, additional length may be allowed if the dock cannot be moved laterally to achieve the four (4) foot depth. However, no dock shall exceed one hundred (100) feet in total length including gangways. Dock length exceeding sixty (60) feet shall not extend beyond the point where water depth exceeds four (4) feet. On docks exceeding sixty (60) feet in length, dock slips and shore stations shall be limited to the outer forty (40) feet of the overall length. For a permit application requesting dock length in excess of sixty (60) feet, a water depth profile from sixty (60) to one hundred (100) feet shall be provided by the applicant.
3. Docks shall be placed in the middle of the property ownership. Where this is not practical, the setback may be reduced to a minimum of twenty feet between the dock and the riparian boundary (see definition) property line. For setbacks from streams, creeks, rivers, etc., see Section 5.1.G.3

4. The maximum length of the wing section on a dock, whether it shall be a T, F, 4 or L shaped dock shall not exceed the lesser of 30 feet or 30 percent of the lot frontage (See Figure #2, Dock Dimensions).

5. The width of the deck on a dock shall not be greater than eight (8) feet.

6. If foam or similar easily damaged floatation systems are incorporated into the dock design, the material shall be completely encased in solid

wood or a suitable impervious, non-corrosive material such as aluminum or galvanized sheet metal so as to avoid the breakup or scattering of materials. Plywood, particle board, etc., shall not be used. Boards may be spaced up to one-half inch apart on the bottom or drain holes may be incorporated into other materials to aid in drainage. All foam encased floating docks shall be maintained according to these standards or else be immediately and completely removed from the lakeshore protection zone.

7. All floating docks shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods are limited to cable; galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks or a temporary pipe and post system which allows the dock sections to slide up and down.

8. Only one dock is allowed per waterfront property ownership. This includes multiple contiguous lots under one family or related ownership, unless an individual dwelling is constructed on each separate and legally defined lot with independent water and sewage disposal, in which case one dock is allowed per independent dwelling unit/lot. (This does not apply to marina applications.)

9. Docks which have deteriorated to the extent that they may contaminate the lake, such as having exposed white Styrofoam, shall be immediately repaired as necessary to eliminate the risk of contamination or shall be removed from the lakeshore protection zone.

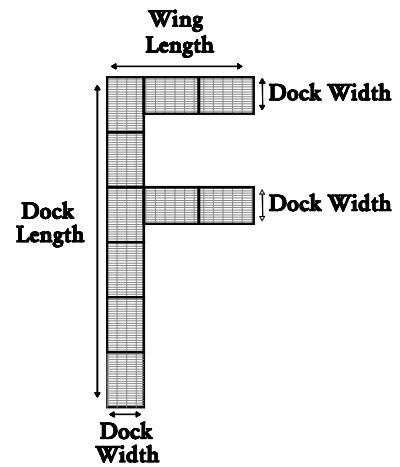


Figure 2. Dock Dimensions

10. It is a violation of these regulations to abandon docks or to otherwise allow docks or dock remnants to float out onto the lake unsecured.
11. Repair or replacement of materials on existing docks shall be in accordance with these regulations.
12. Shared Docks

All shared docks shall comply with the standards found in Section 5.2.A Docks, except as otherwise specified in this section.

- a) Multiple contiguous property owners or a single property owner with multiple contiguous properties that combined exceeds 200 lineal feet of lake frontage and 200 feet of average lot width, may apply for a shared dock under this Section.
- b) For T shaped docks, each wing may extend up to 30-feet in length as measured from the center line of the access dock. The T configuration would allow up to 60-feet of total wing length.
- c) A minimum setback of 40-feet is required between both riparian boundaries and any portion of a shared dock that exceeds 30 feet in total width.

13. Swimming Docks

- a) Swimming docks shall comply with all standards applicable to conventional docks, except as described in Section 5.2.A.13.B through 5.2.A.13.g.
- b) No part of a swimming dock may be located more than sixty (60) feet from the shoreline at the current lake level.
- c) The size of swimming docks shall not exceed 100 square feet with no one dimension exceeding 12'.
- d) Swimming docks shall have a minimum of eight inches of visible freeboard.
- e) Only one swimming dock or one conventional dock, but not both, is permitted on property ownerships with less than 100 feet of lake frontage. On property ownerships with 100 feet or more of lake frontage, only one swimming dock and one conventional dock is permitted.

- f) A minimum setback of thirty-five (35) feet is required between both riparian boundaries and a swim dock.
 - (g) Swimming docks may be prohibited based on considerations of public safety and congestion. Owners are advised that swimming docks may create a significant hazard for navigation. Flathead County and the City of Whitefish shall assume no liability for navigational accidents involving swimming docks.
14. Floating Trampolines: Floating trampolines and similar items are regulated under this provision because of the large amount of lake coverage and tall profile.
- a) The entire surface area of a floating trampoline and accessory attachments shall be included in the coverage calculation as provided for in Section 5.1(D) of these regulations.
 - b) A minimum setback of 35 feet is required between both riparian boundaries and any portion of the floating trampoline and attachments.
 - c) No part of a floating trampoline may be located more than 60 feet from the shoreline at the current water level.
 - d) Floating trampolines shall be anchored to prevent encroachments into the setbacks.
 - e) Floating trampolines may be prohibited based on considerations of public safety and congestion. Owners are advised that floating trampolines may create a significant hazard for navigation. Flathead County and the City of Whitefish shall assume no liability for navigational accidents involving floating trampolines.

B. MARINAS

- 1. A minimum of 100 feet shall remain open between any dock structure and the side riparian boundary (see definition).
- 2. Minimum 25-foot travel lanes shall be provided between dock structures for boats to travel.
- 3. Private Marinas (the following apply):
 - a) Each marina shall have a minimum of 250 feet of lake

frontage.

- b) The design standards for dockage shall be limited by and must comply with Section 5.2.A. unless otherwise modified below.
- c) If the marina meets all regulation criteria without requiring a variance, and is designed such that it will be permanently anchored and not moved further into the lake as the water level drops, then a 3-foot wide gangway up to 20 feet in length shall be allowed in addition to the maximum sixty (60) feet in dock length.
- d) The maximum length of each individual boat slip shall not exceed 20 feet.
- e) The total amount of constructed surface per property in the lakeshore protection zone shall not exceed ten (10) square feet for each lineal foot of lakeshore frontage.
- f) The amount of constructed surface located below the mean annual high water line shall not exceed eight (8) square feet for each lineal foot of lakeshore frontage.
- g) The overall density of boats/boat slips provided shall not exceed one boat/boat slip per twenty (20) lineal feet of lakeshore frontage.
- h) Private marinas may not incorporate boat ramps.
- i) No retail sales or rental facilities shall be allowed on the site.

4. Commercial/Public Marina (the following apply):

- a) Each marina shall have a minimum of 300 feet of lake frontage.
- b) In addition to Section 5.2.A design standards for docks, the maximum length of that portion of any dock extending over water shall be 100 feet.
- c) If the marina meets all regulation criteria without requiring a

variance, and is designed such that it will be permanently anchored and not moved further into the lake as the water level drops, then a 3-foot wide gangway up to 20 feet in length shall be allowed in addition to the maximum sixty (60) feet in dock length.

- d) The length of the individual boat slips shall be sized according to need.
- e) The amount of constructed surface in the lakeshore protection zone per property shall not exceed 15 square feet for each lineal foot of lakeshore frontage.
- f) The amount of constructed surface located below the mean annual high water line shall not exceed 12 square feet for each lineal foot of lakeshore frontage.
- g) The overall density of boats or boat slips provided shall not exceed one boat or boat slip per ten (10) lineal feet of lakeshore frontage.
- h) One boat ramp per commercial marina may be constructed.
- i) One shore side sewage facility and one shore side fuel station per marina may be constructed.
- j) Lake related rental services and retail sales of water use related merchandise such as boat fuel; oil and lubricants, fishing equipment and personal items are typically associated with the marina.
- k) A distance of one hundred (100) feet water ward from the dock's end may be required to be identified by buoys placed in the lake to indicate a reduced boat speed so that no wake is produced. The reduction to no wake speed may be required at a distance greater than one hundred (100) feet depending upon the size of the marina and the size of the boats to be berthed.

C. BOATHOUSES, BOAT SHELTERS AND SHORE STATIONS

1. Boathouses and boat shelters are not allowed in the Lakeshore Protection Zone.
2. Floating boat lifts and shore stations (which include shore stations or floating docking stations designed for personal watercraft) shall not

be located farther into the lake than the permitted dock length.

3. Floating boat lifts and shore stations shall be located no closer than twenty-five (25) feet from a riparian boundary (see definition) line, except that a greater setback distance may be required if, in the opinion of the governing body, the structure would likely infringe on the scenic view or navigation from the adjoining property.
4. The highest point on a floating boat lift or shore station shall not exceed ten (10) feet in height above the current water elevation of the lake.
5. Floating boatlifts and shore stations may have a roof cover on a seasonal basis which is removed during the late fall, winter and spring periods of non-use. Said cover will be made of a non-reflective material. Earth tone colors are preferred, such as: green, tan, brown, and gray.
6. Shore stations may be placed on both sides of the dock, provided the required 25-foot setback can be maintained for both riparian boundaries.
7. When a floating boatlift is installed in conjunction with a dock, no section shall result in an overall dock surface width exceeding eight (8) feet. (See Figure 3. Floating Boat Lift Placement.)

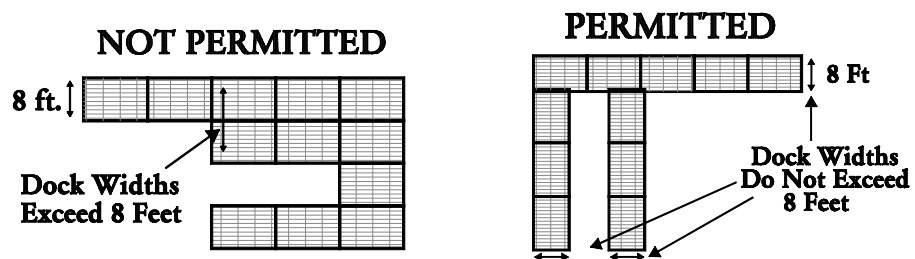


Figure 3. Floating Boat Lift Placement

8. The entire surface area of a floating boatlift or floating personal watercraft docking station shall be included in the coverage calculation as provided for in Section 5.1(D) of these regulations.
9. The square footage of a single canopy covering a shore station or boat slip, on one property ownership, shall not be included in the maximum allowable constructed surface area within the Lakeshore

Protection Zone. However, the square footage of each additional canopy must be included in the overall impervious cover calculation as established under Section 5.1.D.

D. BOAT RAMPS AND BOAT RAIL SYSTEMS

1. No private boat ramps will be permitted.
2. Footings and/or the base of the boat ramp shall be constructed below the pre-existing grade of the shoreline.
3. All material excavated from the lakeshore to construct the boat ramp and not used as the ramp foundation material shall be immediately and completely removed from the Lakeshore Protection Zone and deposited in such a manner as to prohibit its re-entry into the lake.
4. Boat ramps shall be of the same elevation as the pre-construction lakebed and lakeshore elevation.
5. No boat ramp shall exceed six hundred (600) square feet in surface area water ward of the average high water line.
6. Maximum grade shall not exceed 15% and no natural slope in excess of 30% grade shall be disturbed by construction of a boat ramp.
7. All ramps shall be finished with non-skid surface to insure maximum traction for vehicles launching and retrieving boats.
8. Boat ramp edges, if deemed necessary, shall be rip rapped in order to prevent erosive undercutting.
9. Rail systems must be manufactured and installed in a manner which permits removal during winter months to avoid ice damage.
10. The rails of the rail launching system shall not exceed four (4) inches in height and the rail system shall lie on and follow the grade of the existing lakebed and lakeshore.
11. One (1) boat rail system shall be allowed per property ownership. The boat rail carriage may have a canopy (subject to Sections 4.2.C.5 & 5.2.C.0) if it is stored outside of the Lakeshore Protection Zone when the boat is not in use.

E. RETAINING WALLS

1. Retaining walls are permitted only where active erosion is present.

2. Retaining walls shall be built at or landward of the mean annual high water elevation and shall conform to the contours of the existing shoreline.
3. Where active erosion is present and documented, an applicant may propose to regain erosional loss experienced in the past 12 months. No attempt shall be made to extend the land area into the lake any further.
4. Riprapping shall constitute the primary retaining wall method. Rip rap retaining wall standards are as follows:
 - a) Riprap rock shall be angular and sized properly for the specific task. Nominal rock size is to be six (6) to twelve (12) inches (eighteen (18) inches maximum) in diameter. Riprap that replaces an existing retaining wall may be of larger size (up to thirty-six (36) inches in diameter) only if determined necessary for structural integrity.
 - b) All riprap rock shall be free of silts, sands or fines and acquired from a site outside of the Lakeshore Protection Zone.
 - c) Rock may be hand picked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.
 - d) Riprap rock shall be placed at or landward of the mean annual high water line and be placed at a maximum slope of 1 horizontal: 2 vertical. Gabion baskets are not allowed.
 - e) Prior to the placement of riprap, filter fabric may be required to be placed along the shoreline and incorporated into the riprap design to inhibit erosion and the washing of fines through the riprap.
5. In situations where riprap will not suitably address the erosional process, the following methods in order of preference are allowed: rock-faced concrete wall, wood wall, or bare concrete wall. The following standards shall apply to the use of any of the above methods:
 - a) When more than 12 inches of retaining wall is exposed in the lake ward side of the wall, rip rap complying with conditions

above shall be placed on the water ward side of the wall such that the toe of the rip rap shall not extend water ward of high water and the top of the rock shall extend to within at least six (6) inches of the top of the wall.

- b) The landward side of the retaining wall shall extend at least two (2) inches but not more than eight (8) inches above the level of backfill to inhibit surface water run-off which may carry fertilizer, herbicides, pesticides, etc.
- c) All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the Lakeshore Protection Zone.
- d) Backfill shall be limited to that amount necessary to re-establish the pre-existing slope and contours of the landward side.
- e) If an existing wall has to be replaced, it shall be completely removed from the Lakeshore Protection Zone and the replacement wall shall be constructed in essentially the same location as the existing wall. If removal of the wall proves unfeasible or will cause environmental hazards (sedimentation, bank failure, etc.), a new wall may be constructed up to three (3) feet lake ward of the existing wall.

F. DREDGE, FILL AND SWIM BEACH CREATION

1. Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is not permitted.
2. Dredging for the purpose of removing accumulated silt, sand or gravel behind an existing dock or within the confines of an existing structure is only permitted if all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their re-entry into the lake.
3. Dredging for the purpose of removing accumulated silt, sand or gravel which blocks access to a docking area is only permitted if such area to be dredged is less than 500 square feet, and all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their re-entry into the lake.
4. Dredged areas shall be stabilized with a protective armament as soon as possible after excavation. In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed

and set aside, then replaced as a protective layer subsequent to the excavation.

5. Dredging and/or filling is only permitted at the time of year specified on the permit.
6. Fill projects for the purpose of expanding existing land areas shall not be permitted.
7. Discharge of fill material directly into the lake shall not be permitted.
8. Filling of wetlands adjacent to a lake is prohibited.
9. Addition of gravel to a swimming beach is allowed on a case by case basis, subject to the following requirements:
 - a) Application of gravel is allowed only where the predominant existing surface is gravel.
 - b) Application of gravel is not permitted in the following areas: sites subject to strong wave action or currents; sites covered predominately by vegetation; silts, or fines; below average low water.
 - c) Placement of fill directly into the lake is prohibited.
 - d) All fill shall be clean, washed gravel of 3/4 to 1-1/2 inch diameter free of silts, sands and fines. Gravel type and color shall approximate that existing on the adjacent lakeshore.
 - e) Maximum fill depth is four to six inches.
 - f) The volume of fill shall not exceed one cubic yard per eight lineal foot of lake frontage.
 - g) Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it has washed away, silted in, or revegetated over time is prohibited.
10. Permits for any dredging and filling may also be required by the Department of State Lands and the U. S. Army Corps of Engineers.

G. UTILITY LINES (Electrical, Sewer, Water, Wells)

1. Electrical Lines:

- a) No permanent overhead electrical lines are allowed in the lakeshore protection zone.
- b) All lighting shall be designed to reflect light away from abutting or adjacent properties and the lakeshore protection zone.
- c) Low voltage pathway lighting, no greater than four (4) feet in height may be permitted. Such lighting shall be downcast and shielded. No permanent lighting on docks is allowed.

2. Sewer lines/Disposal facilities:

- a) Domestic sewer lines or components are prohibited in the lakeshore protection zone.
- b) Municipal/community sewer lines, lift stations and other associated facilities are prohibited in the lakeshore protection zone.
- c) Shore side pump out facilities may be placed in public or private marinas or public parks.
 - (1) Such facilities must receive approval of the Montana Department of Health and Environmental Sciences and the Flathead City-County Health Department.
 - (2) Such facilities shall include equipment to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system located outside the lakeshore protection zone.

3. Waterlines:

- a) Deep wells located outside the lakeshore protection zone are the preferred water source. If this is not feasible, direct lake water may be used.
- b) A water line shall be located no closer than ten (10) feet from either side property/riparian boundary (see definition) line.
- c) Only the minimum amount of material necessary to lay the line shall be removed from the trench.

- 1) All material excavated from the trench shall be replaced back into the trench as backfill. Any material which is not replaced back into the trench shall be completely removed from the lakeshore protection zone.
- 2) In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
- 3) In areas where no rock layer exists, the replaced dirt shall be compacted and consolidated in order to prevent erosion. Additional cover, such as gravel, a rock layer or vegetation, may also be required.
- d) Following installation, the lakebed shall be returned to its condition prior to construction.
- e) A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake.
- f) At no time shall the wheels of any vehicle come in contact with the lake.
- g) That portion of the waterline which is not buried and does lie exposed on the bottom of the lakeshore shall be weighted to prohibit floatation or snagging.
- h) Waterlines using submersible pumps may incorporate an electrical line but all such work and installation shall be done in accordance with the State Uniform Plumbing and Electrical Codes.
- i) No waterline shall lie on top of or be attached to a floating dock or raft.
- j) Water rights are required to install a waterline.

4. Wells:

- a) No well shall be drilled or developed in the lakeshore protection zone.

- b) For wells located outside of the lakeshore protection zone, when originally developing and pumping the well, the silt-laden water shall not be allowed to flow directly into the lakeshore protection zone and lake.

H. FUEL TANKS

1. No bulk fuel tanks shall be placed over the water. All tanks shall be landward of the lakeshore protection zone.
2. A pressure shut-off valve shall be located next to the bulk tank on the line, landward of the lakeshore protection zone.
3. All fuel handling shall be outside the main berthing area unless weather or lake exposure conditions are unfavorable for such a location. Any fueling stations, other than bulk tanks, shall be located near an exit by water from the berthing area or at some location from which, in case of fire aboard an adjoining boat, the stricken craft may be quickly removed without endangering other boats.
4. Fuel stations shall only be allowed in a public or private marina or a public recreation site.

I. BUOYS

1. A buoy-boat anchor will only be permitted if placement will not cause a potential safety hazard or interfere with navigation and recreation.
2. Anchors for the buoy shall be clean, solid non-polluting materials and should be placed within 100 feet of the mean annual high water line.
3. The buoy shall be at least 12" in diameter and constructed of plastic or dense foam which is light-colored and reflective for maximum visibility. Logs, wood, or metal barrels are prohibited.
4. The distance from the buoy to a moored boat shall not exceed 20 feet.
5. The buoy shall be centered on the property or placed such that the farthest swing of a buoy moored boat in the prevailing winds is 25 feet from the riparian boundary (see definition). Buoys are not permitted on lots less than 75 feet in width.
6. Only one buoy-boat anchor is allowed per lakeshore property.

7. The buoy shall be suitably anchored to the lake bottom to avoid drift. The anchor shall be clean, solid, non-polluting material such as concrete, rock or steel blocks.
8. The line between the buoy and the anchor shall be cable, galvanized chain or weighted nylon/polypropylene rope (to prevent floating).
9. State Law requires any boat or other watercraft attached or anchored to a buoy shall maintain at all times between sunset and sunrise, a 32-point light (a light visible at all times from all directions for a 360-degree field of view).
10. A buoy which has deteriorated to less than 12" in diameter or is failing to float for adequate visibility is a navigation hazard and shall be immediately removed from the lake.
11. No boat or other watercraft shall be anchored overnight without having obtained a permit for a buoy unless it is anchored so as to meet the standards and regulations of the Montana Department of Fish, Wildlife and Parks.
12. The user of the buoy-boat anchor shall be the lakeshore property owner immediately landward and adjacent to the site or an individual who has the owner's specific permission.
13. Swim buoys and lines (for the purpose of marking a swimming area) are only allowed for public beaches, and private or public marinas. The buoy lines may be located no closer than twenty (20) feet from the riparian property line, and no more than sixty (60) feet from the shoreline.

J. DWELLING UNITS

1. No permanent or temporary dwelling units or portions thereof, shall be constructed within the lakeshore protection zone.
2. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained. However, the building height shall not be increased beyond twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building for structures that are less than 25 feet in height, or the existing height, if the structure exceeds twenty-five (25) feet in height. (See Section 6.4 Non-Conforming Structures)

3. Construction materials shall be of a non-reflective nature. If paint is used, it shall be of earth-toned colors.

K. FENCES AND HEDGES

1. Fences within the lakeshore protection zone shall only be allowed upon a showing of hardship such as where a private residential property abuts a park, resort, commercial use or other incompatible use. No fence shall exceed six (6) feet in height.
2. All fences must maintain at least 50% open space in their design (solid fences are prohibited).
3. Barbwire fencing is prohibited.
4. Fences shall not extend water ward of the mean annual high water level.

L. DECKS, WALKWAYS AND STAIRWAYS

1. Constructed stairways, walkways, and grandfathered decks are all structures which are subject to the maximum allowable constructed areas as prescribed in Section 5.1.
2. Decks, including decks on top of, or balconies cantilevered from boathouses, storage buildings, dwelling units, etc., are prohibited.
3. Stairways and walkways constructed of impervious material shall have maximum width of four feet and shall be designed to provide access only.
4. Elevated stairways shall follow the natural grade of the existing shoreline and no portion of the walking surface of the stairway or landing shall be situated higher than two vertical feet above the underlying lakeshore.
5. Stairway railings are permitted. Railings shall not extend higher than four feet above the stairway walking surface and shall have a visually open design. Metal, non-ornate railings may be painted brown or green by the manufacturer prior to installation.
6. The recommended construction material for stairways is untreated wood. All wood shall be left in its natural (unpainted) condition. Stairways or walkways of poured-in-place concrete are prohibited.

M. RESTORATION OF THE LAKESHORE PROTECTION ZONE

1. Areas where vegetation has been destroyed in the Lakeshore Protection Zone shall be restored in accordance with Section 5.1.C.

CHAPTER 6 - ADMINISTRATION

6.1 WHITEFISH CITY-COUNTY LAKE AND LAKESHORE PROTECTION COMMITTEE

A. CREATION, COMPOSITION AND COMPENSATION OF MEMBERS.

1. The Whitefish City-County Lake and Lakeshore Protection Committee is hereby created as a special Planning Board in compliance with Section 75-7-211 MCA empowered to review and comment on all activities within the jurisdiction of the Whitefish Lake and Lakeshore Protection Regulations and shall be known as the Lakeshore Protection Committee.
2. The Committee shall consist of seven (7) voting members. Four (4) members shall constitute a quorum to conduct business.
3. The Whitefish City Council shall appoint three (3) members. All members shall be residents of Whitefish and at least two shall be lakefront property owners or residents.
4. The Flathead County Board of Commissioners shall appoint three (3) members. All members shall be residents of rural Flathead County and at least two shall be lakefront property owners or residents.
5. The seventh member shall be appointed by the Whitefish City-County Planning Board. He/she shall serve for a 2-year term unless he/she requests removal or is removed by a majority vote of the Planning Board. Alternatively, the Planning Board may advertise, interview, and appoint a non-member of the Planning Board who is a resident of Whitefish or rural Flathead County.
6. City appointees and county appointees shall each initially be appointed to a staggered term of 1, 2 and 3 years. Thereafter, each succeeding term shall be three (3) years. Vacancies during the term shall be filled by the appropriate governing body for the duration of the unexpired term.
7. The Committee members shall serve without compensation.

B. DUTIES

1. Advise and work with potential applicants.
2. Review and give recommendations on projects requiring a lakeshore permit.
3. Review and offer amendments to the Lake and Lakeshore Regulations, to keep them current, to improve efficiency and to address problems.
4. Report violations to the proper authorities.

C. ORGANIZATION

The committee shall organize and adopt By-Laws pursuant to these regulations establishing the operating policies and procedures of the committee.

6.2 VARIANCES

A. GENERAL CRITERIA

1. Minor Variance

Minor variances from the construction requirements or design standards of these regulations may be granted when the governing body determines that:

- a. Due to unusual circumstances, a strict enforcement of such requirements and standards would result in undue hardship;
- b. No reasonable alternatives exist which do meet the standards herein; and,
- c. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit" contained in Chapter 4.

2. Major Variance

A variance request shall be considered major when any of the following criteria are met:

- a. The variance request does not meet the requirements of

Section 6.2, A.1;

- b. The variance request deviates substantially from the construction requirements or design standards of these regulations; and,
- c. The variance request creates a major environmental impact.

B. REVIEW PROCEDURE

1. Minor Variance

- a. The Lakeshore Protection Committee, if it so determines, shall recommend to the governing body that a minor variance(s) from these regulations should be granted as part of an application's approval.
- b. The governing body shall consider the Lakeshore Protection Committee's recommendation and act upon the application. It may grant, modify or deny the variance request.

2. Major Variance

- a. When the Lakeshore Protection Committee determines that a major variance is required, it shall notify the governing body and applicant of said decision.
- b. The determination that a major variance is required shall cause to be prepared, by and at the expense of the applicant, an environmental impact statement. The environmental impact statement shall contain:
 - 1) Description of the proposed project;
 - 2) Description of, and the reason for, the major variance being considered;
 - 3) Description of existing conditions;
 - 4) Description of anticipated impacts as they relate to each of the Policy Criteria in Section 4.1 and 4.2;
 - 5) Alternatives to the proposed project, which would not require a major variance; and,
 - 6) Any other information that may be required.

- c. Nine (9) copies of the environmental impact statement shall be submitted to the Administrator.
- d. The Lakeshore Protection Committee shall review the application for major variance and make a recommendation to the planning board.
- e. The planning board shall review the information and make a recommendation to the governing body.
- f. The governing body, upon receipt of all materials and recommendations, shall hold a public hearing on the proposed action. Notice of the time and place of the public hearing shall be published at least once in a newspaper of general circulation not less than 15 nor more than 30 days prior to the date of the hearing.
- g. Following the public hearing, the governing body shall act upon the application and may grant, modify or deny the variance request.

6.3 VIOLATIONS - PENALTY

A person who violates the conditions of a permit issued under these regulations, fails to obtain a permit prior to performing work requiring a permit under these regulations, or who knowingly violates any provision(s) of these regulations, commits a misdemeanor, and on conviction may be sentenced to thirty (30) days in the City/County jail, fined five hundred dollars (\$500.00), or both.

The conditions of a permit shall be considered to have been violated if work exceeds the scope and conditions of the permit in dimension, type or quality of materials, type of equipment used, or the extent of the work permitted.

Fines collected under this section shall be paid to the general fund of the governing body, for the purpose of administering these regulations.

In the event that any building, structure or improvement is erected, reconstructed, altered, converted, or maintained, or any building, structure, improvement, or land is used in violation of these regulations, the proper legal authorities of the City of Whitefish (within the City limits) and the Board of County Commissioners (outside the City limits), in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, maintenance, or occupancy of such building, structure, improvement or land, or to prevent an illegal act, conduct, business, or use in or about such building, structure, improvement or land.

6.4 NON-CONFORMING STRUCTURES

- A. Any non-conforming structure may be continued and maintained, provided there is no physical change other than necessary maintenance and repair.
- B. There may be a change in ownership or management of an existing non-conforming structure, provided there is not change in the nature or character of such non-conforming use.
- C. A non-conforming structure having been damaged or partially destroyed to an extent not exceeding 50 percent of its real value, exclusive of foundations may be restored. Whenever a non-conforming structure is damaged in excess of 50 percent, the repair or reconstruction shall conform to the requirements of these regulations. All work exceeding routine maintenance needs a permit.
- D. A structure that is non-conforming shall not be added to or enlarged unless the structure is made to conform to the requirements of these regulations. Any segment of a non-conforming structure that is located outside of the lakeshore protection zone may be modified or enlarged, provided it does not alter the usage of that portion of the non-conforming structure.
- E. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained in accordance with the requirements of Section 5.2.J.2.
- F. Voluntary replacement of an undamaged, non-conforming structure shall be allowed subject to the following conditions:
 - 1. Complete conformance to the regulations would result in forfeiting of grandfathered rights which would otherwise unlikely be abandoned.
 - 2. A reduction of twenty percent (20%) in constructed surface area is made in the proposed replacement.
 - 3. The replacement would result in less material or visual impact on Whitefish Lake.
 - 4. All materials conform to standards set in these regulations.
 - 5. There is no change in the nature of character of the non-conforming use.

6.5 AMENDMENTS

These regulations may be amended. Prior to adopting any proposed amendment, the Whitefish City Council and Flathead County Commissioners shall each hold a public hearing thereon. Notice of the time and place of each public hearing shall be published at least once in a newspaper of general circulation not less than fifteen (15) days nor more than thirty (30) days prior to the date of hearing.

Records of amendments to these regulations shall be maintained by the governing body in a form convenient for use.

6.6 LIABILITY

The permittee shall not hold the governing body or any of its agents liable for any damage that may occur to his/her property as a direct or indirect result of the issuance of a permit.

CHAPTER 7-DEFINITIONS

Whenever the following words or phrases appear in this ordinance, they shall be given meaning attributed to them by this Section. When not inconsistent with the context, words used in the present tense shall include the future, the singular shall include the plural and the plural the singular, the word "shall" is always mandatory, and the word "may" indicates a use of discretion in making a decision.

ADMINISTRATOR: The Flathead County Planning & Zoning Office for all unincorporated areas of Flathead County. The Tri-City Planning and Zoning Office for the City of Whitefish.

APPLICANT: The person or persons, making applications to the governing body for a permit.

BOATHOUSE: A permanent structure which provides housing and shelter for boats and which has more than ten (10) percent of any side or end wall area enclosed.

BOAT RAIL SYSTEM: A facility consisting of tracks extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

BOAT RAMP: A facility consisting of a pad extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

BOAT SHELTER: A permanent structure which provides shelter for boats and which has not more than ten (10) percent of any side or end wall area enclosed. A breakwater adjoining a shelter shall not be considered a part of a wall.

BUILDING: A structure having a roof supported on columns or walls for shelter, support, or enclosure of persons, animals, or chattel.

BUOY: A float; especially a floating object moored to the bottom; used to moor boats, mark channels, etc.

CONSTRUCTED AREA: That portion of the lake and lakeshore protection zone covered by any constructed structure such as a dock, deck, walkway, boat house, boat shelter, water trampolines, floating boatlift or floating personal watercraft docking station or covered by any non-native material or substance that would not naturally occur at this point such as concrete or asphalt.

DOCK: A platform, either non-floating or floating, which extends into, over or across the water to provide for boat moorage, access to a moorage area, swimming facilities, or other related activities.

DOCK LENGTH: Dock length is the length of that portion of the dock which extends lake ward at any time over water and is measured from the current water level to the farthest water ward end of the dock (See Figure # 4).

DOCK WING: That portion of a dock and deck which lies generally parallel to the shoreline with its main function as a wave break or to provide a boat slip or sheltered area as opposed to primarily provide access out to deep water (See Figure # 4).

DREDGING: The process of excavating material from the lake bottom and thereby lowering the elevation of a portion of the lake bottom. The term shall include the process of extending the lake area landward by excavating material from the lakeshore protection zone and thereby lowering the elevation of that portion of that zone.

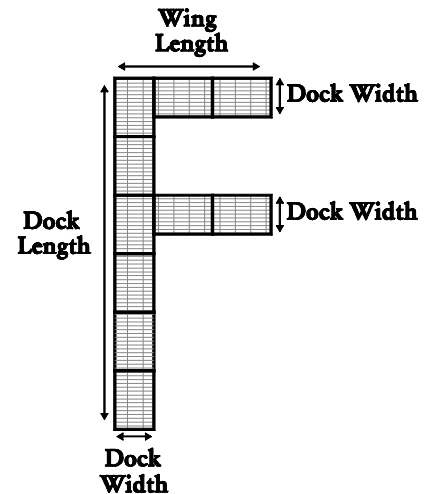


Figure 4. Dock Wing and Length

DWELLING UNIT: All permanent, semi-permanent, and temporary buildings, guest quarters, cabins, apartments, mobile homes, campers, trailers, motor homes, or similar facilities, including appurtenant structures, which provide sleeping and/or cooking facilities.

FILLING: The process of discharging material onto a lake bottom and thereby raising the elevation of a portion of the lake bottom including the elimination of an aquatic environment or a wetland environment by extending the dry land area into such aquatic or wetland area. The term shall include the process of discharging material onto the lakeshore protection zone and thereby raising the elevation of a portion of that zone.

FLOATING BOAT LIFT: A single or multi-sectional, self-floating system designed to support a boat or personal watercraft.

GOVERNING BODY: The Board of County Commissioners of Flathead County, or the Whitefish City Council, whichever jurisdiction would apply.

IMPERVIOUS: Not permeable, impenetrable by water.

IMPROVEMENT: A valuable addition made to property (real estate) or a change in its condition which is intended to protect or enhance its value, beauty, utility, or to adapt it for new or further purposes.

LAGOONS: An artificial boat harbor created by excavating the shoreline, removing earth material and thereby extending an aquatic environment into a dry land area.

LAKE: A body of standing water, and the area within its lakeshore, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least twenty (20) acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

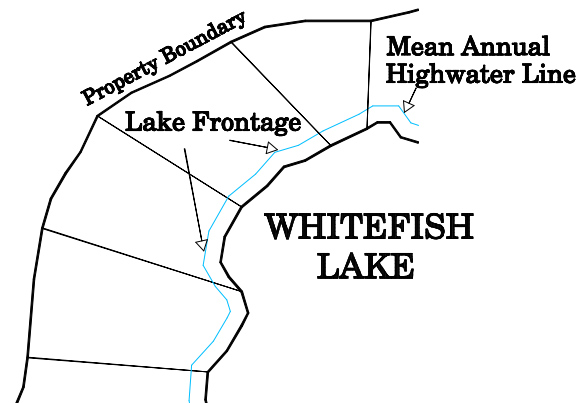


Figure 5. Lake Frontage

LAKE FRONTAGE: For the purpose of administering these regulations, lake frontage shall be based on the linear feet of lake frontage of the lot or tract to be developed as well as any adjoining undeveloped lots under the same ownership. Lot ownership is measured at high water (See Figure # 5)

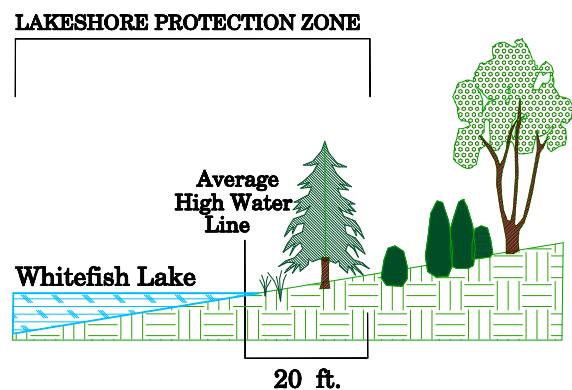


Figure 6. Lakeshore Protection Zone

LAKESHORE PROTECTION ZONE: The lake, lakebed, and the land area which is within twenty (20) horizontal feet of the parameter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation (See Figure #6).

MAINTENANCE, NECESSARY: To keep in existing state through the use of structural repair to improvements such as: foundations, support piling or posts, new roofs, stringers, etc. Generally this work involves motorized equipment and is necessary to prevent the loss of the improvement. This work typically requires a permit.

MAINTENANCE, ROUTINE: To keep in existing state through routine or seasonal work or upkeep involving planting, adjusting, minor replacement of boards, shingles, broken windows, clean-up of debris such as branches and leaves, restacking of fallen rock, etc. Typically, only hand tools would be involved. In the case of non-conforming residences or boathouses, painting and staining is also considered routine maintenance.

Any dredging, filling, or excavation is not considered routine maintenance.

MARINA: Any waterfront facility which provides for recreational boating and other water related activities. Any facility which provides dock slips or moorage for five (5) or more boats is considered a marina.

MARINA, COMMERCIAL OR PUBLIC: A marina facility which is intended to serve the general public beyond the scale of a homeowners' association.

MARINA, PRIVATE: A marina facility in which use is specifically limited to an adjacent homeowners' association or similarly restricted group of people.

MEAN ANNUAL HIGH WATER ELEVATION: The mean average of the highest elevation of a lake of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. A highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high water elevation. For the purpose of these regulations, the mean annual high water elevation of Whitefish Lake is *3000.6' msl' ('88 Datum), Lost Coon Lake is 3104 feet based on the U.S. Geological Survey Datum.

NATIVE PLANTS: A terrestrial plant species that has persisted within 100 feet of mean high water of Whitefish or Lost Coon Lakes prior to influence by humans. A resource file on native plants is available at Whitefish City Hall and the Flathead County Planning and Zoning Office, and the Tri-City Planning and Zoning Office.

PERMIT: A document issued by the governing body verifying compliance with the requirements and provisions of these requirements.

PERSON: Any individual, firm, corporation, partnership, institution, or entity; the state and its departments and any political subdivision of the state.

PLANNING BOARD: The Whitefish City-County Planning Board.

RECONSTRUCTION: To rebuild an existing facility such that at the time of reconstruction in excess of 50% of the value of the facility excluding foundation is replaced.

REPAIR: To restore an existing facility to sound condition by replacing component parts of the facility.

RETAINING WALL: Any structure built essentially parallel and contiguous to the shoreline of a lake which is designed to protect the land mass inland from the structure, from erosion or wave action and protect the lake from siltation.

*Footnote: same as 2997' msl ('29 Datum)

RIPARIAN BOUNDARY: A projection of the side property lines from their point of intersection with the perimeter of the lake (at its mean annual high water elevations), lake ward at right angles to the natural shoreline. Where a structure has been built into the lake and the structure has caused the build-up of an artificial shoreline, the artificial shoreline cannot be utilized to establish the riparian boundary (See Figure # 7).

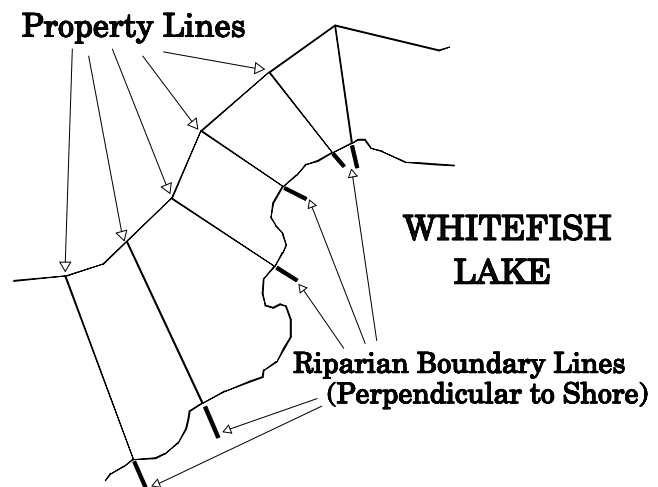


Figure 7. Riparian Boundary Lines

RIPRAP: A layer, facing, or protective mound of stones, or rock or other materials randomly placed to prevent erosion, scour, or sloughing of a structure or embankment.

SEWAGE PUMPOUT FACILITY: A facility specifically provided to pump out and receive the contents of holding tanks on board boats, with holding tanks understood to mean any retention system on a boat which is designed to hold sewage, and which must be emptied from time to time.

SHORE STATION: A seasonal, portable, metal or wood frame carriage which is designed to hoist boats from the water and to store boats over the water.

SIDE WALL AREA (of a dock): The sidewall of that portion of a dock which is generally perpendicular to the shoreline.

STRUCTURE: That which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and either attached to or supported by the ground or floating on the water (e.g., dock, buoys, etc.).

SWIMMING DOCK: A type of dock which does not abut the shoreline or extend above the water to the shoreline, used typically for swimming and related activities. See "Dock".

WETLANDS: Water-land interface areas which are inundated or saturated by surface and/or ground waters at a frequency and duration of time periods sufficient to establish and, under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs, and similar areas. Wetland areas may be separated from the

main body of water by man-made barriers or natural berms. The water elevation of a wetland area is related to the elevation of the lake water.

INDEX

B

boat shelter

- definition · 45
- placement of · 28

boathouse

- definition · 45
- placement of · 28

buoys

- definitions · 45
- design and construction standards · 36

D

dock

- definition · 45
- dimensions · 24
- flotation · 18
- materials · 17
- setback requirements · 21
- swim dock · 25

dredging

- definitions · 46
- design and construction standards · 32

dwelling unit

- definitions · 46
- design and construction standards · 37

E

erosion · 19

- control · 30

F

filling

- construction standards · 19
- definition · 46
- design and construction standards · 32

M

marina

- commercial/public · 27
- definition · 48
- design and construction standards · 26
- private · 26

mechanical equipment

- use · 21

permits

- activities requiring · 3
- definition · 48
- exemptions · 4
- issuance of · 9
- validity · 8

R

retaining wall

- definition · 48
- materials · 17
- placement of · 30

S

shore station

- definition · 49
- placement of · 28

structure

- definition · 49
- materials · 17
- repairing non-conforming · 43
- setback requirements · 21

V

variances

- major · 40
- minor · 40
- violations · 42

W

waterlines

- design and construction standards · 34

